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Oral Comments from Waukesha Listening Session

December 11, 2003

The information contained in this summary is a transcript of public comments provided at the Waukesha listening session. Portions of the taped comments may not have been transcribed if inaudible. Names are spelled phonetically and may be misspelled.

Comments were received during two sessions. Session I was from 4:30 p.m. to 5:30 p.m. Session II was from 8:00 p.m. to 9:00 p.m. Time allotted to each speaker was based on the number of speakers that registered.

Session I

Moderator: What I'm going to do is -- let's try to keep things moving. So those of you that have your coats on, if you could take your conversations out in the hallway so the rest of us can stay on schedule, I would greatly appreciate that.

What we would like to do -- to do, if you have a public comment, come up to the microphone up here. It's kind of karaoke night. If you would like to come up and give your public comment at this microphone. Again, those of you that are on your way out, please take your conversations out in the hallway. Thank you.

Now we'll read off three names. The first name will be the first person up for public comment. The other two should be ready to go. Okay. Lewis Ferguson (ph.). Lewis, come on up. After Lewis will be (inaudible, too far from microphone).

You'll have four minutes to make your public comment, and then I will shut off. Please come up to this microphone right up here. And whenever you're ready, Lewis.

Lewis Ferguson: I don't know if this is in the scope of what you intended to permit here, but as you know, I was critical about not having a different category of urban lakes. As I said, 15,000 lakes in Wisconsin, and we want to keep them all like -- in Milwaukee like they are up in the Northwoods. It's been -- for 100 years these lakes have been developed, and -- and it's like putting blinders on to say that these can't be any different. And we're trying to get permission -- I'm from Little Muskego Lake -- we got DNR permission to dredge a bay. We dredged a doughnut around the shore, and all -- and because they said they don't want it dredged out in the middle because the fish habitat, they won't spawn. B.S., they're going to -- they spawned for 100 years and they will still spawn if we take that muck out.

You want to like make a horseshoe around there, a ring, and it'll just slide right back in there. It's a stupidity, and I've seen a lot of stupidity, excuse me, from the DNR over the last 24 years that I've been living on that lake.

We had a beautiful aeration system in that lake and the DNR made us take it out, and it was working and - and the muck was receding, and the fish got better, and the DNR said sorbidity in the water and made us take it out. We've got more weeds and so forth since then.

I -- I just sometimes think you people don't know what you're doing. It's like Will Rogers said, "I knew a man who was so educated that he could say horse in seven different languages, but he bought a cow to ride." Well, I think some of your people coming out of college don't know what the hell end is up. Excuse me, but that's the way I feel.

Moderator: Thank you. Ms. Diller. Ms. Diller here? Who wants her four minutes? Donald Perry, are you ready?

Donald Perry: We have a place up in Door County, Washington Island, and part of my interest here is that I tend to think I'm seeing good things happening from this, but what I'd like to say is that when they're looking at the restrictions and the rules that you pay a little -- a little closer attention to the difference between legal nonconforming residences versus new construction. In other words, we built in 1950 and we're complying with the laws and the rules for houses -- the same laws and rules for the houses that are being built today. And it's being very restrictive as to what we can do. Our house was there before the laws, but yet we can't live in our house and use our house within reason. I'm not talking about building condos, but I think there should be somewhat of a difference in how the two different structures are looked at. New constructions can be strict, legal nonconformings have a little more flexibility.

Number two, the hardship rule that seems to be required for all non -- nonconforming or variances, in many cases other people I've talked to, it's almost impossible to really truly come up with a hardship. For example, our place was built, I don't really have a hardship that I can determine that I'd like to expand my property, but the law says I need a hardship. And barring, you know, putting myself in a wheelchair, it's hard to determine. So maybe the hardship law should be modified or amended to be more reasonable, more usable.

Boathouses, it seems like you're changing the requirements from boathouses, but not addressing boathouses, and I don't know who it is. I don't think any of us can determine -- can tell what the proper use for a boathouse is. I mean if I keep a boat in it or a lawnmower, if I want to call it a boathouse, I think I should still be able to have one, because what good is a boathouse 75 feet from the water. I bought water property to be able to use my boat, and now all of a sudden I can't build a boat house. That's a lot of track you've got to buy. On Lake Michigan you do not leave your boat in the water overnight, nor do you leave your track in the water over the winter. So it's just a different thing.

Appreciate what you folks have done. I think we're a step in the right direction, so thank you for the opportunity to make my comments.

Moderator: Thanks, Don. Ralph Olson. After Ralph, I'd like to see Jim Pierce.

Ralph Olson: I'm Ralph Olson. I'm a riparian property owner on Big Cedar Lake, and I really appreciate what this advisory committee has accomplished, especially in clarifying buffers along the lake, these structures, which protect beneficial insects and birds, and secondarily fish and native flora. I've lived on Cedar Lake all my life. And even under the fuzzy rules of NR115 on buffers, I've seen flagrant, flagrant abuse of that regulation by homeowners who've built since 1968. And I think you're accomplishing a lot, but I think without strict enforcement we're going to be pretty much where we were before. And that's why I suggest the advisory committee addresses citation, prosecution and fines most stringently. That's what I wanted to say.

Moderator: You're up. And after Jim, we're up to Jack Warner. Is Jack still here?

Jim Pierce: I'm Jim Pierce. I've got a cottage on a lake in Waushara County. I'm also a lake chairman of a lake district, and I feel I'm conservative -- conservation-minded. Excuse me.

I'd like to address the minimum lot size. I feel that the proposal A is unfair because it eliminates many of the lots around a lake. You're reducing the size -- you're making them more expensive, and therefore, less people are going to be able to afford buying a lot or buying a cottage because they'll be larger and most of the lots are based on frontage, water frontage. And so if you've got 100 frontage versus 66 or 65, it'll be more expensive. Another reason it's unfair is that it discriminates against the people that you do have sewer, that have paid for sewer. And thirdly, it discourages the construction of sewer districts and putting in sewers if the lots don't require them. They're larger, they don't require a sewer, it'd be dumb, you know. To build it may cut down on the number of sewer districts that are formed or set up from here on in. So I just think that proposal A is unfair to lot owners. Thank you.

Moderator: Thank you, Jim. Jack. After Jack, I'm on Ron Edward.

Jack Warner: Hi. My name's Jack Warner, and I have lake property in Oneida County and I winter here in Menominee Falls. Warm, sunny Menominee Falls.

There are a couple things that kind of bother me that came out of -- out of this discussion today. I -- I believe there's two issues which kind of are outside NR115. One issue is the septic system issue and the other issue I just discovered was the rip-rap issue, which is governed by the county. No, it is not?

Unknown: No, you need to get a -- obtain a Department of Natural Resources permit to place rip-rap along the shoreline for shore stabilization.

Jack Warner: You do?

Unknown: Yes.

Jack Warner: All right. Well, I think septic systems are still a big issue up north, and -- and in NR115 I don't see where there is any link to regulation of the septic systems. And there has to be, in my mind, some kind of -- whether it's in NR115 or elsewhere, some kind of enforcement of the rules on septic systems. That's one thing.

This shoreline erosion control in Oneida County has been abused. If you guys are regulating it, you absolutely have done a poor job, I'm sorry to say. I have sold a place up there in 1990. We had beautiful 150 year old pines hanging over the water, (inaudible) plant them, the shoreline was zealously protected from beavers as well as anything else. The new owners decided to put rip-rap in the front, large rocks with gravel five foot back backfill, cut down the pines, the birch in the front, and this is going on a lot up there. And I -- I think it has to be regulated in some form. It's a very serious issue on my part. This totally violates what you guys are trying to do. If turf means lawn, I suggest you get it out of there. We don't need lawns up there because lawns bring fertilizer, and fertilizer brings damage, serious damage to the lakes. So I suggest you eliminate the word turf as a -- as a vegetative buffer.

Finally, I think a lot of people are confused by the fact that we are -- what we -- let's say I have a lawn today, but I can't have a lawn under NR115. What are the grandfather provisions for these rules? I mean there's no mention that I can see about grandfathering, and I think these rules are not intended to say to

people, "Look, you know, we're -- we're requiring this, but really you don't have to go back and do things which have been part of your history for 50 years." Thank you.

Moderator: Thank you, Jack.

Female: I know we've reached the ending, and I just want to -- that one question that had come up at the end of listening sessions that did not come up today. If you have an existing lot that you'd like to grandfather the shoreline, and you have a conforming structure on that lot, there's no trigger for that mitigation. There's nothing that says that you have to stop cutting that grass. So I wanted to make that clear because it will affect people in this area especially. And it came up at the question (inaudible, too far from microphone).

Unknown: I don't have grass, but I'm just saying that people are sort of reacting because they don't understand the grandfather --

Female: Right. The triggers for mitigation are only if you have a nonconforming structure that you want and, you know, things like that.

Moderator: Thanks for the clarification. Ron, and then after Ron is (inaudible) still here? No, she's gone? Okay. After Ron, Dennis Koshere. Is Dennis here?

Ron Hetwer: (ph.): Hi. My name is Ron Hetwer, and I have several places, all of them on the lake, and we're probably in the area of a couple of thousand feet of shoreline, and so I'm very concerned with assessment and the artificiality of that based on the real estate codes.

When it comes to vested interest, we have a lot of people in real estate who have a way of trying to make things happen more for their wallet, and I'm going to shift it from a discussion on that, because those are sidekicks of the zoning administrators and the DNR.

Every time I hear the word permit, I never really hear the dollar value, and the whole thing here is money, whether it be to the landowner or to the state. We've been issuing permits up in Vilas County and Oneida County for years and years and years, and getting nothing more than a piece of cardboard to hang at the roadway and nothing else. And there's certainly nothing in NR115 that means anything for permits.

For instance, to take a tree down the owner can do that if it's dead, diseased or dying, but there is ample case law that it goes also for something that is -- that is say damaged, and anybody that works in the forest knows that within a split section you can girdle a tree and it's dying. So therefore, the whole thing hinges on whether the state trusts the landowner to do what is appropriate. I think a landowner comes and says I buy land to build something or for my personal enjoyment -- someone once said the pursuit of happiness - - and when that is curtailed by legislation that is enforced only by local counties, you have to remember that we're talking at a state level here, and all of the enforcement is basically deferred to those people who are at the local level and who are not elected. They are bureaucrats. They are there at the wishes and pleasures of some other person, and they usually get pretty much entrenched. So I use that tree example because that's only one example. The idea of filling or landscaping -- the word landscaping doesn't appear in too many places -- but it does in shoreline zoning talk about excavation and filling. I don't know how you can landscape too much without excavating and filling, but it becomes an excuse within the operations of the permitting, and therefore, also the escape in the -- in the enforcement area to see through the facades, see through the upfront parts, and get down to exactly what people buy land for.

Now people buy land, and they may do it for speculative reasons, such as condominiums and resorts, and we get to something like what is a resort, who determines it's a resort. So we ask for definitions, and we

can all say well, maybe the Department of Revenue licenses resorts, and so therefore, we can look to licenses as an indication of whether it's a resort. And as it turns out, that's not a good enough definition. Anybody can really have a resort. Anybody can have a -- a private residence. I, personally, am one of the few that have a manufacturing facility on a lake instead of being relocated to the backwash of some swamp at a local community. There's no reason to think that manufacturing and industrial people can't do a natural job.

Moderator: Ron, I have to cut you off here. You're at four minutes.

Ron Hetwer: Let me close then by just saying --

Moderator: Thank you.

Ron Hetwer: -- that one of the big things that I personally do not like is that these minimum standards are based on the feeling that the local citizen is not trustworthy.

Moderator: Thanks, Ron. Chuck Mitchell. Is Chuck here?

Dennis Koshere: My name is Dennis Koshere. I'm a resident of Muskego, here in Waukesha County, and I also own lake property in Forest County. I am the current president of our lake association. I'm on the board of directors for the Forest County Association of Lakes. And lastly, I've been a realtor for the last 27 years, owning my own real estate brokerage business for the last 15 years here in Waukesha County. However, I'd like it stated and understood that I speak here today only as a concerned citizen, and not as a representative for any of the aforementioned groups.

As I conduct business and travel throughout the state, it is apparent that a revision of NR115 is both timely and very necessary. As someone who sells lakefront properties locally and then travels four or five hours to northern Wisconsin to experience the Northwoods' atmosphere, it is important for the advisory committee to understand both local and statewide issues, pertaining to the lake and lake property value protection. I believe this can only be accomplished with a strong enforced statewide code.

As a business owner, I am constantly being bombarded with new regulations, which I have to learn to live with. As a property owner, I may not like these regulations, but must realize that while we are -- while we as individuals hold title to our lakefront properties, the way we manage our lakefronts can negatively affect lake ecology and aesthetics that belong to everyone -- ourselves, our neighbors and the public lake users as well. So of the proposals to update NR115 as established by the advisory committee, I believe proposal A, when offered in any particular category, works for the best interest of both the public trust and mine. Although more restrictive by being clearly laid out, as a business owner, and as a lake property owner, I could live with it.

We must also hold lakefront businesses to the same standards as individual lakefront property owners. Again, a strong enforced statewide code will set the minimum standards that could help eliminate local political pressure to bend the rules. It is unlikely that local regulations would be more restrictive. Today, with both local and statewide budget cuts, it's very easy for local governments to want to increase development and/or allow substantial improvements on lakefront property to increase assessment and tax revenue. The sad truth is we can't take back what we've lost on our local lakes, but we can attempt to manage our lesser developed lakes more responsibly now and in the future.

To summarize, the advisory committee has the opportunity to make things a little more right this time around. It should choose methods and procedures that are clear and less subject to interpretation, and yes,

more restrictive, bearing on the side of Wisconsin's public trust doctrine. Thank you for the opportunity to discuss my personal opinions today.

Moderator: Thank you, Dennis. Chuck.

Chuck Mitchell: I'm here speaking for Citizens for A Scenic Wisconsin, and we're a public service organization, non-profit group. We have 550 members, with a mission to preserve the scenic beauty of Wisconsin's countryside, maintain the special character of cities and towns. And I'm just going to recap on -- in four minutes -- I'm going to try to be brief, and I'll probably miss a few details, so it might not make as much sense as if I had time to read the whole thing.

But obviously, it's been quite clearly pointed out that this narrow strip around the water is really the most ecologically sensitive of all the areas for (inaudible) purposes in the natural environment. And it's in this zone that water plants and land interact, so it's a habitat for fish and waterfowl and land animals critical to the healthy, attractive lakes and rivers. It filters the water and it provides the main part of the scenery and the background.

And all of this has to do with property values. Property values depend not only on what you do to -- just individually on your property taken alone, but what the surroundings are. If I'm going to sell my property, and a person looks down and out and sees a beautiful backdrop, a natural backdrop, my property value goes up.

So we're -- we, as an organization, have selected options, and I'll briefly go down through them, which are intended to preserve the -- the beauty and the cleanliness of the lakes, most important being the maintaining of the 75-foot buffer, and that's pretty obvious. It's -- experts -- we've listened to the experts and read reports on the committee, 100 feet -- 150 feet would be better from the standpoint of a buffer zone to -- to filter water, but 75 feet is the -- is a practical limit, it's been established. We can't create anymore nonconforming structures. So let's make sure we respect the 75 feet.

We think that new lots should be a minimum of 100 feet. 65 feet, and I'm talking from experience living on a lake, it's just too narrow. Houses and piers are just too close together for neighbors to enjoy lakeshore living. Let's not make the 65 foot nonconforming. I mean if they exist, we're not going to ask anybody to replat. But let's not create any new ones, I don't -- we don't think.

We think that buildable area is important. So we need to exclude wetlands and floodways from the calculation of what is a buildable lot. And we think it's time to set limits on impervious surfaces. It's a very basic parameter relating to disturbance of the shoreland, and obviously, run off increases in direct proportion to impervious surfaces.

Rules for nonconforming structures, this is -- the problem here is mainly one of administration, where it's been so poorly stated and it's almost impossible to -- to regulate and enforce the val -- the -- assess the valuation of the house and so forth, and we don't think that structures in primary buffers should be expanded and structures in a secondary buffer should be expanded away from the water, except with local conditions taken into account.

There is no limit on the ordinary and recurrent maintenance as one of the options, we support that. We want the homeowner to be -- to take as much pride in his house as -- as possible, and it'll be the best for the neighborhood in general and for the person enjoying his house.

Defining major reconstruction as replacing 50 percent of the outside walls of the structure we think solves the problem of the 50 percent of the assessed valuation. I think that's a better definition. We think it's

fair to the people who don't have a nonconforming house and are not allowed to build one. So I think it's a good compromise to the people who own a nonconforming house and to the rest of us who don't.

And lastly, it is time to set standards for multiple unit development. We're seeing more and more of that on the lakes. I'm talking at Long Lake and Eagle River area, where I've got my place, condominiums are sprouting up where there used to be resorts, and we generally agree with the requirements stated in the section five of the common package as prepared by the DNR. And actually DNR's offering us an opportunity here to -- to do a good stewardship, so let's -- let's thoughtfully select these new rules because it's our quality of life that we're talking about here, and let's respect and follow those rules once we establish them.

Moderator: Thank you. Mary (inaudible). Is Mary here? Floyd, you're next. Then after Floyd, Roger. Did Roger leave? After Floyd, Cheryl Nenn. Is Cheryl here?

Floyd Pochowski: My name is Floyd Pochowski. I'm a truck driver, not a speaker, but I'm here on behalf of the Lauderdale Lakes Improvement Association, which I happen to be president of, which has approximately 500 members, and I'm vice president of the Walworth County Lake Association, which has 20 plus -- represents 20 plus lakes out of the 37.

And our feeling is that we do need some changes, and really not too concerned which way they go. But our main concern is enforcement. We feel that the policy we have now is -- is hard -- being -- we don't have any enforcement right now. Our DNR is being cut back. Our county is cutting back on their planning and zoning. We have one lake specialist in Walworth County. She's on a DNR grant, and when that grant expires, we really don't expect Walworth County quite frankly is going to pick her up again. And as a lifelong lake resident, and speaking with other long-time lake residents, it -- it's our view that as lake owners we're a special privileged few that have -- have the opportunity to live on a lake and we're more or less caretakers, not just owners. And we'd like to have something that we can pass on to future generations. Thank you.

Moderator: Thank you. Cheryl? After Cheryl, Fred Storm (ph.). Is Fred here?

Cheryl Nenn: Good afternoon. Thank you for the opportunity to comment on the preliminary proposals drafted to update the Shoreland Management Program. I'm Cheryl Nenn, project director, Friends of Milwaukee's Rivers.

Friends of Milwaukee's Rivers is a non-profit organization, representing approximately 350 members in the greater Milwaukee area. Our focus is the Milwaukee River Basin, which includes the Milwaukee River, the Menominee River, and the Kinnickick River.

We're a grass roots organization, working to protect and improve the water quality of the Milwaukee River Basin, and we believe in the fundamental right of every citizen to be able to use our rivers and streams for fishing, boating and other recreational purposes.

The statewide nominal standards for shoreland development that are contained within NR115 are designed to protect water quality, fish and wildlife habitat, and scenic beauty along our lakes and rivers. Given the increasing development along our waters and the better understanding that we have of the negative effects of development on water quality and fish and wildlife habitat, these standards have never been more important.

Wisconsin's rivers and lakes belong to all citizens, not just those who can build houses on them. We need to find the proper balance between property owners' rights to develop their land and the public's right to

enjoy Wisconsin's waters now and in the future. Protecting our shorelines protects our waters and wildlife, and also protects our fishing, hunting and tourism industries, which are vital to both our state and local economies.

NR115 also protects our shorelines from over development, which increases impervious surfaces and storm water runoff, which causes downstream flooding and sewage overflows.

Numerous studies have also found that cleaner rivers and lakes generally mean higher property values for shoreland property owners. In the Milwaukee River Basin, where roughly 20 percent of our state's population lives, virtually all of our streams and rivers have been seriously impacted by development and pollution over the past century. In many places we have serious flooding problems, which are caused by development that didn't take into consideration the cumulative impact of hardening our landscape. While the most urbanized portions of our rivers in incorporated areas of Milwaukee County are now protected under NR115, significant portions of rivers in Waukesha, Washington, Ozaukee, Fond du Lac and Sheboygan Counties are protected by these standards that require shoreland buffers, zoning setbacks and development standards.

What happens in the headwaters of our rivers affects us downstream. So the residents in the more urbanized and suburbanized portions of our watersheds, such as in Milwaukee County, are also influenced indirectly by implementation of these standards.

Though Milwaukee's rivers and streams aren't the most pristine in our state, they are ours, and despite the problems of development and pollution, our waters are finally beginning to heal. Dams have been removed, water quality, at least in the Milwaukee, is improving, fish are returning, along with increases in both numbers and diversity. And along with this, anglers and recreational boaters are also increasing each year.

Strong shoreland management standards are needed to help continue this trend in the greater Milwaukee area toward more healthy rivers that everyone can enjoy. I urge the DNR to adopt the preliminary proposals that are most protective of water quality and habitat, mainly those options requiring the deepest primary buffer, narrowest viewing corridor, fullest setback for boathouse, minimum size requirements for structure expansion, minimum building area, structure limitations for buildable living space, and limits on impervious surface area and -- and duration of camping.

I'd like to say also, I served briefly on the Organized Water Subcommittee for this revision and feel that the proposed changes allow for some reasonable use of small, nonconforming lots that are most prevalent in our urban areas, and are fair to property owners while still protecting our primary buffers.

While allowing no buildings on nonconforming lots would be the most protective of water quality, we felt that approach is neither fair nor practical, and that an equitable tier approach would allow for some limited development of noncompliant building locations, and prevent the need for variances at the local level.

In conclusion, protecting our shorelands doesn't mean stopping all development. It just means finding a good balance to make sure that fish and wildlife can still live in our waters and Wisconsin residents can continue to enjoy our natural areas for years to come. I urge the DNR to adopt the preliminary proposals that are most protective of water quality, as I firmly believe that what is good for our environment is good for our economy.

Proposal A, developed by the Shoreland Management Committee, provides a good balance, it ameliorates intensity of development and protects water quality and wildlife habitat while still allowing property owners to have reasonable use of their properties. Thank you.

Moderator: Thank you. Fred?

Fred Storm: My name is Fred Storm. I'm a riparian property owner in Waukesha County. I have a very brief comment to make. I will not take four minutes. This has been a most interesting presentation by the people who've promoted it, and I simply want to go on record and say that the mitigation procedure that's being proposed should be put into an understandable perspective. It really in my opinion is a tradeoff for -- it's going to have the most impact on existing property owners who -- either conforming or nonconforming situations. Most of us don't conform to what they're trying to propose. We have too much yard going down to the lakes and so forth. I think that as existing property owners want to make improvements, that they must -- there must be reinforcement of the mitigation procedures in which they trade off protecting their shorelines and so forth for whatever they want to obtain. And that's essentially what I want to say is that we need to use the mitigation process and what's being proposed under these new regulations as a basis of controlling existing properties, whether they conform or -- whether they're conforming or nonconforming properties. Thank you.

Moderator: Thank you, Fred. Joe, last but not least.

Joe Maniaci: I'm Joe Maniaci. I live in the town of Holland, Sheboygan County, and I'm here personally and professionally. I'd just like to reverse the saying something about the DNR taking. What the DNR has taken they have now given back.

I think this is really a very good proposal. I've seen a lot of really good things, especially a lot of common senses brought back to us. Anyone who wants to do what's depicted in this kind of picture about all grass being stupid -- to me, this makes a lot of sense. Why would you want lawn all the way to the beach doesn't make sense to me. So I really applaud that.

I would like to see -- and you've done an excellent job. I don't know where Toni is, but she -- I could -- great job putting this together.

I would like to see the proposals on nonconforming structures go with allowing a full reconstruction of the property as long as you don't go beyond the (inaudible). I think that makes a lot of sense. I would see -- need to see property being improved rather than becoming dilapidated and that makes a lot of sense to me. Using a footprint, using some common sense there.

I would like to see the ordinary high water mark a little more uniform. And by that I mean, Sheboygan County, along Lake Michigan uses a fixed number, and the measurement of that number is to me quite arbitrary because how it's measured -- I may be wrong on this -- but if the sand shifts, that ordinary high water mark shifts. Not the water's edge, which I could see -- or that I knew. So I would love to see that perhaps go with what the DNR is recommending. I can't believe I'm saying that, but anyway, congratulations and I hope --

Moderator: Just make sure the recording is --

Joe Maniaci: There you go. And I am a realtor. But thank you very much.

Moderator: Thank you, Joe. That's all the sheets I have for public comments. I'd like to again thank you for your time and energy. Go back to wrapping Christmas presents or shopping or whatever you

need to do. We will be here until nine o'clock. If you have questions that weren't answered now would be a good time to tap one of them on the shoulder and get your question answered. Thank you.

Session II

No comments.